

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS, aka
MICHAEL L. HOLMES,

Plaintiff, No. CIV S-04-1390 LKK PAN P

vs.

TERESA A. SCHWARTZ,

Defendant. ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed March 21, 2005, the district court declined to adopt the January 7, 2005 findings and recommendations and remanded the case for further proceedings.

As noted by Judge Karlton, the December 20, 2004 amended complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

On December 29, 2005, plaintiff filed a notice requesting that the court address all mail to him using the name James L. Davis as the prison officials refused to deliver mail to him

1 addressed to Michael L. Holmes. Good cause appearing, the caption of the case will be changed
2 to read James L. Davis, aka Michael L. Holmes v. Schwartz, and the Clerk of the Court will be
3 directed to change plaintiff's address in the court record to reflect that.

4 On June 17, 2005 and November 23, 2005 plaintiff filed motions for orders
5 directing the California Medical Facility to allow plaintiff to receive mail in his true name,
6 Michael L. Holmes. In light of plaintiff's recent transfer to a different institution, these motions
7 will be denied without prejudice to their renewal. Plaintiff's August 22, 2005 motion for
8 extension also concerned his situation at his previous location; that motion will also be denied
9 without prejudice.

10 On April 18, 2005, plaintiff filed a motion to disqualify the presiding magistrate
11 judge from this case. Plaintiff is advised that the previously assigned magistrate judge recently
12 retired. Thus, plaintiff's motion will be denied as moot.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Service is appropriate for the following defendants: Teresa Schwartz.
15 2. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,
16 an instruction sheet and a copy of the amended complaint filed December 20, 2004.

17 3. Within thirty days from the date of this order, plaintiff shall complete the
18 attached Notice of Submission of Documents and submit the following documents to the court:

19 a. The completed Notice of Submission of Documents;
20 b. One completed summons;
21 c. One completed USM-285 form for each defendant listed in number 1
22 above; and
23 d. Two copies of the endorsed amended complaint filed December 20,
24 2004.

25 4. Plaintiff need not attempt service on defendants and need not request waiver of
26 service. Upon receipt of the above-described documents, the court will direct the United States

1 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
2 without payment of costs.

3 5. The Clerk of the Court is directed to change the caption of the case to read
4 James L. Davis, aka Michael L. Holmes v. Schwartz; the Clerk of the Court shall change
5 plaintiff's address in the court record to reflect service on James L. Davis.

6 6. Plaintiff's motions filed April 18, 2005, June 17, 2005, November 23, 2005,
7 and August 22, 2005 are denied without prejudice.

8 DATED: February 27, 2006.

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11 UNITED STATES MAGISTRATE JUDGE
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FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS, aka
MICHAEL L. HOLMES,

Plaintiff, No. CIV S-04-1390 LKK PAN P

vs.

TERESA A. SCHWARTZ, NOTICE OF SUBMISSION
Defendants. OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Amended Complaint

DATED:

Plaintiff